



**United States Environmental Protection Agency
Region 1 – New England
5 Post Office Square, Suite 100
Boston, MA 02109-3912**

**URGENT LEGAL MATTER - PROMPT AND COMPLETE REPLY IS REQUIRED
CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Elaine Pereira, Environmental Compliance Manager
Brayton Point LLC
1 Brayton Point Road
Somerset, MA 02725

Re: Request for Information Pursuant to Section 308 of the Clean Water Act (33 U.S.C. § 1318), Docket No. CWA-308-R01-FY20-31 from Brayton Point LLC. Permit ID MAR05J01C (Somerset, MA)

Dear Ms. Pereira:

On November 6, 2019, the U.S. Environmental Protection Agency, Region I (“the EPA”) conducted an inspection at the Brayton Point LLC (“BP”) port facility located at 1 Brayton Point, Somerset, MA (the “Facility” or “site”). The Facility was inspected for compliance with the federal Clean Water Act (the “Act”). Copies of the inspection report, and associated photographs, are enclosed with this letter.

Section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a) authorizes the EPA to require any owner or operator to provide information needed to determine whether there has been a violation of the Act. Accordingly, you are hereby required, pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) to respond to this Request for Information (the “Request”) **within 30 calendar days of receipt of this letter**. Please read the instructions in Enclosure 1 carefully before preparing your response and answer each question in Enclosure 2 as clearly and completely as possible.

Your response to this Request must also be accompanied by a certificate that is signed and dated by the person who is authorized to respond to the Request. A Statement of Certification, Enclosure 3, accompanies this letter.

Information submitted pursuant to this Request shall be sent by certified mail **and** electronic mail, and shall be addressed as follows:

United States Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Stop: OES04-2
Boston, MA 02109-3912
Attention: Alex Rosenberg
rosenberg.alex@epa.gov

Compliance with this Request is mandatory. Failure to respond fully and truthfully or to respond within the time frame specified above also constitutes a violation of the Clean Water Act subject to enforcement action, including the assessment of penalties. In addition, providing false, fictitious, or fraudulent statements or representations may subject you to criminal prosecution under 18 U.S.C. § 1001.

You may, if you desire, assert a business confidentiality claim covering part or all of the information requested in the manner described by 40 C.F.R. § 2.203(b). All information claimed to be confidential should be contained on separate sheet(s) and should be clearly identified as “trade secret” or “proprietary” or “company confidential.” These separate marked sheets should be submitted to EPA by hard copy or compact disc, and not by email. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, the information may be made available to the public without further notice to you. In addition, enclosed with this Request is an information sheet to help small businesses understand and comply with environmental regulations.

If you have any questions concerning your compliance with this letter, please contact Alex Rosenberg at (617) 918-1709, or you can have your attorney contact Jeff Kopf, EPA’s attorney, at (617) 918-1796. For questions specifically related to federal Multi-Sector General Permit permitting, please contact David Gray at (617) 918-1577.

Sincerely,

James Chow, Deputy Director
Enforcement and Compliance Assurance Division

Enclosures

Cc: John McNulty, General Manager, Patriot Stevedoring and Logistics LLC (e-copy only)
Hunter Sperry, Dir. Port Operations, Patriot Stevedoring and Logistics LLC (e-copy only)
Alex Rosenberg, EPA Region 1 (e-copy only)
David Gray, EPA Region 1 (e-copy only)
Jeff Kopf, EPA Region 1 (e-copy only)

Enclosure No. 1

Information Request Instructions

1. Please provide a separate narrative response to each and every question and subpart of a question set forth in this Request. Precede each answer with the text and the number of the question and the subpart to which the answer corresponds.
2. If any question cannot be answered in full, answer to the extent possible. If your responses are qualified in any manner, please explain.
3. Any documents referenced or relied upon by you to answer any of the questions in the Request must be copied and submitted to EPA with your response. All documents must contain a notation indicating the question and subpart to which they are responding. If the documentation that supports a response to one item duplicates the documentation that supports another item, submit one copy of the documentation and reference the documentation in subsequent responses.
4. If information or documents not known or not available to you as of the date of the submission of the response to this Request should later become known, or available to you, you must supplement your response. Moreover, should you find at any time after the submission of your response that any portion of the submitted information is inaccurate or incomplete, you must notify the EPA of this finding as soon as possible and provide a corrected response.

Enclosure No. 2

Respond to the Following Questions

I. General Business Information:

- a. Specify the full legal name(s) with exact spelling, the business mailing address, telephone number, and address(es) for each of the following entities:
 - (1) Brayton Point LLC, 1 Brayton Point, Somerset, MA (“BP”);
 - (2) Patriot Stevedoring and Logistics LLC (“Patriot”), 1 Brayton Point, Somerset, MA; and
 - (3) Eastern Metal Recycling (“EMR”), 1 Brayton Point, Somerset, MA.
- b. Provide a chart/diagram that illustrates the corporate and management structure of the three entities listed above in Question I.a., including parent companies, subsidiaries, and affiliated entities that do business in New Hampshire, Vermont, Maine, Massachusetts, Connecticut and Rhode Island and have, or are covered by Clean Water Act permits. Identify who has responsibility for environmental compliance at each facility.
- c. If there are any other facilities owned or operated by any of the entities listed in Question I.a. or their affiliates in New England from which there are “stormwater discharges associated with industrial activity,” as defined in 40 C.F.R. § 122.26(b)(14), provide their: full legal name(s); business mailing address; any other address where each listed entity does business; if incorporated, specify the state of incorporation; if a parent company exists, provide the parent company’s name and address; and the date that the entity became an affiliate of either Brayton Point LLC or Patriot. In addition, for each facility listed:
 - (1) describe the operation(s) that have taken place at any of the facilities owned and/or operated by each affiliated entity since January 2015, in chronological order, including the period of time and dates in which the operations occurred;
 - (2) provide a site map that shows the locations where each of these operations take/have taken place;
 - (3) indicate whether each facility is authorized to discharge stormwater under either the a federal or state National Pollutant Discharge Elimination System (“NPDES”) permit; and
 - (4) provide the primary and secondary standard industrial classification (“SIC”) codes for each facility and its associated operations.
- d. As stated in Section 1.1 of the Facility’s August 2019 Stormwater Pollution Prevention Plan (“SWPPP”), Brayton Point LLC submitted a Notice of Intent (“NOI”) (Permit ID: MAR05J01C) for Multisector General Permit (“MSGP”) authorization under Subsector Q1 for the 1 Brayton Point Facility. Patriot Stevedoring and Logistics, LLC, however, is listed as the Facility operator in

Section 2.2., and the stormwater pollution prevention team in Section 2.3 gives responsibilities for stormwater compliance to individuals from Patriot, BP, and EMR. During the November 2019 EPA inspection, an EMR representative, Mr. Bastien, was unaware of the MSGP permit and its requirements. Any and all operators¹ must submit a NOI for MSGP authorization.

- (1) Explain the responsibilities of each of these three entities pertaining to the Facility's stevedoring activities (Sector Q, subsector Q1); and
 - (2) For each entity with operational control over the stevedore's activities, file an NOI as an operator (entities can implement a shared SWPPP).
- e. Section 2.1 of the SWPPP indicates that there are no co-located industrial activities besides subsector Q1. Inspectors observed, and the SWPPP describes, the presence of a co-located industrial activity: scrap metal recycling (Sector N, subsector N1 - SIC 5093).
- (1) Explain the responsibilities of each of the three entities (Patriot, BP and EMR) pertaining to the Facility's scrap metal recycling activities (Subsector N1); and
 - (2) For each entity with operational control over the scrap metal recycling activity, file either an NOI or change NOI that includes Subsector N1 as either the primary or secondary (co-located) industrial activity. (Note that it is possible that the scrap metal operation represents Patriot's primary industrial activity at present, and therefore Subsector Q1 could be their co-located activity with primary being Subsector N1, and that BP should file a separate NOI with the primary activity as Subsector Q1.)

II. General Industrial Stormwater Questions. Provide separate answers for each of the Entity listed in Part I.a. above (where applicable):

- a. Provide the most recent Stormwater Pollution Prevention Plan ("SWPPP") as well as all previous revisions since Brayton Point LLC took ownership of the Facility.
- b. The August 2019 SWPPP submitted to EPA on the day of the November 2019 inspection, did not have a signed certification page. Please submit a copy of the current plan's certification page as well as a schedule for the completion and submittal of a revised and certified plan.
- c. The site map contained in the August 2019 SWPPP does not show the temporary scrap steel storage area depicted within the Facility boundary, nor does the SWPPP narrative text and site map denote the depression where stormwater currently collects. Inspectors observed a drainage system, covered by metal grates, that extends from just northeast of the dozer garage along the perimeter of the access

¹ In terms of the MSGP for stormwater associated with industrial, an operator is either the entity with day-to-day operational control of the activities necessary for permit compliance, or an entity that has operational control over (including the ability to make modifications to) the industrial activities.

road towards the depression to the southwest where stormwater collects, as well as stormwater outfalls and associated catch basins along the driveway. Ensure that subsequent SWPPP revisions illustrate and label all of the following elements for not only the laydown areas, but also the fueling area and the driveway between the front gate and the port's own security gate:

- (1) Approximate drainage boundaries including directions of stormwater flow and outfall locations (use arrows to show flow path);
 - (2) Means by which stormwater flows off the site, i.e., pumped or gravity;
 - (3) Boundary of impervious surfaces;
 - (4) Drainage diversion and control structures (i.e., detention basins, sumps, garage drains and catch basins, knife valves, outfall structures and drainage swales, etc.) in place to reduce pollutants discharged off the site;
 - (5) Location of all existing structural Best Management Practices ("BMPs") to reduce pollutants in stormwater runoff;
 - (6) Location of surface waters;
 - (7) Identify areas where the following may be exposed to stormwater: fueling; vehicle maintenance areas; vehicle, parts, and equipment cleaning areas; loading or unloading areas; material stockpiling; liquid storage tanks; liquid storage areas (e.g., wash water, detergents, oil, lubricants); and
 - (8) Location of industrial activities that generate process wastewaters and ultimate discharge locations of each respective activity.
- d. The August 2019 SWPPP describes common best management practices such as silt sacks and required quarterly Visual Assessments and benchmark/impaired monitoring at locations *to be determined*. During the November 2019 EPA inspection, inspectors were shown multiple stormwater outfalls along the access road (driveway) to the scrap metal laydown area, as well as catch basins leading to these outfalls that contained sediment laden silt sacks. Facility representatives explained that no stormwater sampling, visual assessments, nor BMP maintenance has yet been conducted at the outfalls and their respective catch basins. For the MSGP elements listed below, provide the following documents and information in chronological order from the date Brayton Point LLC took ownership of the Facility to the present:
- (1) *Routine Facility Inspections*. If inspections have not been conducted and documented, explain why they were not conducted or documented. Provide copies of all routine facility inspection reports.
 - (2) *Quarterly Visual Assessment/Monitoring*. If assessments have not been conducted and documented, explain why they were not conducted or

documented. Provide copies of documentation of all quarterly visual assessment/monitoring.

- (3) *Benchmark Monitoring.* If monitoring has not been conducted and documented, explain why it was not conducted or documented. Provide copies of benchmark monitoring results. Include all stormwater analytical monitoring results and applicable chain-of-custody forms.
 - a) Indicate on the site map the specific location where each sample was obtained;
 - b) Provide the nature of the discharge (i.e. rainfall, snowmelt), the amount of rainfall (inches), and the time since the previous measurable storm event (days);
 - c) Provide an explanation for any gaps in monitoring data; and
 - d) Provide analytical monitoring results for all parameters measured even if they are not required benchmark monitoring parameters under an applicable sector (i.e. pH).
- (4) *Impaired Water Monitoring (where applicable).* Include all stormwater analytical monitoring results and applicable chain-of-custody forms.
 - a) Indicate on the site map the specific location where each sample was obtained;
 - b) Provide an explanation for any gaps in monitoring data; and
 - c) Provide analytical monitoring results for all parameters measured even if they are not required benchmark monitoring parameters under an applicable sector (i.e. pH).
- (5) *Annual Reports.* If an Annual Report was not submitted timely, please explain why the report was not completed or timely submitted.
- (6) *Any Additional Compliance Investigations/Audits/Inspections* (For example, third party (subcontracted) inspections).

e. Multiple references within the SWPPP state that vehicle fueling will occur inside of the processed concrete scrap metal area using a 50-foot hose attached to a 1000-gallon fuel tank stored within the old dust control building (vehicle maintenance garage). During the November 2019 EPA inspection, Facility representatives stated that there were no fuel tanks within the vehicle maintenance garage that is located within the processed concrete scrap metal area. Additionally, inspectors were shown three 996-gallon aboveground fuel tanks located outside of the processed concrete scrap metal area and were told by Facility personnel that all vehicles and equipment fueling utilized these tanks.

- (1) Provide the date when the location of fueling operations changed;
- (2) Provide documentation of either the permanent closure or removal of the 1000-gallon tank described in the SWPPP; and

- (3) Update the SWPPP and map accordingly to include all stormwater conveyances and best management practices from the fueling area.
- f. The photo dated September 27, 2019 within the SWPPP appears to show a pile of salt on the edge of the dock, next to an unloading hopper (see photo below):



- (1) Explain what standard practices are implemented to minimize spillage of salt into the Taunton River while unloading from a cargo ship;
 - (2) Provide the dates when offloading of salt occurred at the Facility from the date Brayton point LLC took ownership of the site until the present; and
 - (3) On what frequency is salt that escapes the hopper cleaned up.
- g. Form-3 Stormwater sampling, analysis protocols, and reporting requirements, the following list of analytes are included:

The results of such analysis;
Total Suspended Solids
Total Iron
Nitrates plus Nitrite Nitrogen
pH
Oil and Grease
Turbidity

Subsector Q1 benchmark monitoring requirements include the following analytes: total aluminum, total iron, total lead, and total zinc (see MSGP Appendix 8.Q.5). Subsector N1 benchmark monitoring requirements include the following additional analytes: TSS, chemical oxygen demand, and total copper. Update inspection and reporting forms to include all required benchmark monitoring parameters as applicable.

III. Spill Prevention Control and Countermeasures (SPCC) Questions:

- a. The SWPPP states that the marine terminal operations are not required to produce an SPCC plan. From descriptions within the plan as well as observations made by EPA inspectors, it appears that the marine terminal operations extend beyond the processed concrete scrap metal area and include the oil storage and fueling building. During the inspection, Brayton Point LLC representatives explained that the SPCC plan for the powerplant demolition site had been updated prior to the change of ownership in January 2018, but that revisions to the plan are once again necessary to reflect the ever-changing number and location of fuel tanks on site.
 - (1) Submit SPCC monthly inspection forms for the Brayton Point LLC property from the date BP became owner until the present;
 - (2) Provide a chronology of revisions to the current SPCC plan; and
 - (3) Provide a schedule for when an updated plan will be complete.
- b. Section 5.3 of the SWPPP states that all outside equipment that has hydraulic fuel reservoirs greater than 150 gallons capacity will have sized secondary containment. Ensure that all equipment with oil reservoirs greater than 55-gallons in capacity have appropriate secondary containment (sized or active) pursuant to requirements under Clean Water Act Section 311, oil pollution prevention regulations. Revise the SWPPP and SPCC plans accordingly.
- c. Describe the function of the four 186-gallon and one 110-gallon tank depicted on the SPCC map provided to EPA inspectors along the length of the dock between the coal storage area and the water. If they are no longer in use, indicate when they stopped being used, and the date(s) of permanent closure or removal.

Enclosure No. 3 - Statement of Certification

(To be returned with the Response to the Request)

I declare under penalty of perjury that I am authorized to respond on behalf of Brayton Point LLC. I certify that the foregoing responses and information submitted were prepared under my direction or supervision and that I have personal knowledge of all matters set forth in the responses and the accompanying information. I certify that the responses are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

By

(Signature)

(Print Name)

(Title/Company)

(Date)